

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2590 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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NANJI MOHAN VACHHANI

Versus

DIVISIONAL CONTROLLER

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Appearance:

MR PM THAKKAR for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned advocate Mr. D.M. Thakkar is appearing on behalf of the petitioner workman and Shri H.C. Raval on behalf of the respondent corporation.

2. The facts of the present case is that the petitioner was working as a Conductor at Dhoraji Depot of Junagadh Division. While working as a Conductor on 13/5/80, the petitioner workman was going from Junagadh to Jamnagar as a conductor, his bus was checked at

Makhiyana by checking staff, Rajkot and it was found that from Junagadh to Dhoraji about nine passengers were travelling and three child passengers was travelling. The petitioner workman has not issued tickets to the said personas and nor fair was collected from the said passengers. Similarly two passengers were travelling from Junagadh to Jamnagar were also found without ticket and their fair was also not collected by the petitioner conductor. Similarly in another group of 5.1/2 passengers who were travelling in the same bus found without tickets and their fair was not collected. On the basis of the said misconduct committed by the petitioner workman was Chargesheeted on 9th June, 1980, by the Corporation. The said chargesheet was replied by the workman on 18/8/80 and pointed out that there was no malafide intention on the part of the workman for not issuing ticket and at the time of checking, he was doing road booking and therefore, he was not able to issue tickets to the said passengers. He further submitted in reply that at the time of checking, 44 passengers were found with tickets and therefore, it shows bonafide of the petitioner workman. Thereafter, Departmental Inquiry was initiated against the petitioner workman and ultimately, after the hearing of departmental inquiry by order dtd. 16th December, 1982, the petitioner workman was dismissed from service by default case No. 68/80 by the respondent corporation. The said dismissal order was challenged by the petitioner workman before the Labour Court being Reference No. 64/85. The Labour Court has considered the evidence on record and come to the conclusion that looking to the misconduct in question, which has been committed by the petitioner workman, punishment of dismissal is harsh and unjustified and not proper, and therefore, the Labour Court has interfered with the punishment while exercising the powers under Sec. 11(A) of the I.D. Act and granted reinstatement with continuity of service. So far as the relief of backwages is concerned, the Labour Court has observed that the bus from Dhoraji to Junagadh came at 6.10 hrs. in the morning and 6.25 hrs. the workman started bus from Junagadh to Jamnagar and the workman had 15 minutes for booking, though the bus was express, still however, where the bus starts from termination point, the booking is to be made at the stand only. The workman resorted to road booking though he had sufficient time and as many as twenty passengers were found travelling without ticket. This was serious misconduct, however, in view of the fact that the workman had not recovered fair from any of the passengers, he is entitled to lesser punishment than dismissal. Therefore, the Labour Court decided that the workman should be reinstate with continuity of service

and considering the number of passengers who were without ticket and the fact that the workman had not acted according to the rules and resorted to road booking , he should not be awarded any backwages and therefore ultimately the Labour Court has passed award on 20/7/88 directing reinstatement with continuity of service but without backwages of intervening period. The said award is challenged by the petitioner workman before this Court and in this petition rule has been issued on 21st January, 1991. Learned Advocate Mr. D.M. Thakkar is appearing on behalf of the petitioner workman has submitted that there was no dishonesty or misappropriation committed by the petitioner workman as he has not recovered fair from any passenger and therefore, it is a bonafide mistake on the part of the petitioner workman and therefore, the Labour Court has committed error in denying full backwages of intervening period. Learned Advocate Mr. H.C. Raval who is appearing on behalf of the respondent corporation has contended before me that it is a serious misconduct committed by the petitioner workman because having been time to stand booking of 15 minutes inspite of that fact the workman has started bus on road booking, therefore, there was some dishonest intention on the part of the petitioner workman, that if the bus was not checked, he may commit misconduct of misappropriation and therefore, the Labour Court has rightly considered the facts on record and denied the backwages by way of penalty while exercising the powers under Sec. 11(A) of the I.D. Act. It is a discretionary power and this Court may not interfere with the award passed by the Labour Court.

3. I have considered the submissions of both the advocates. I am of the view that the Labour Court has given sufficient reasons in support of its conclusion that the workman had started bus from Junagadh to Jamnagar and the workman had 15 minutes for booking though the bus was an express bus, still however, where the bus started from a termination point, the booking is to be made at the stand only. The workman resorted to road booking though he had sufficient time and as many as 20 passengers were found without ticket. This was a serious misconduct. The Labour Court thought it fit to impose some lesser punishment i.e. denial of backwages of interim period. The Labour Court has rightly exercised powers under Sec. 11(A) of the I.D. Act and come to the conclusion that punishment of dismissal, looking to the misconduct in question, is unjustified and which requires to be substituted by some lesser punishment and not to grant withholding a full backwages of intervening period which amounts to a sufficient

punishment to the misconduct, which has been committed by the petitioner workman, therefore, the Labour Court has rightly exercised the powers and discretion. While exercising power under Secs. 226 and 227 of the Constitution of India, I am of the view that the said award is not required any interference and do not call for any interference from this Court and therefore, this petition is dismissed. Rule is discharged. No order as to costs.

Sd/-

Date : 22/10/99. (H.K. RATHOD, J.)

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